

Federal Housing Finance Board

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on a review of the documentation for a sample of projects and units within one year of receiving the member certifications described in paragraph (b)(1)(ii) of this section, or, in the case of a re-use of repaid AHP direct subsidy pursuant to § 951.12(e)(2), based on a review of the documentation for the re-use upon receipt of the member certification for such re-use described in paragraph (b)(1)(ii) of this section, that:

(i) The incomes of the households that own the AHP-assisted units did not exceed the levels committed to in the AHP application at the time the households were qualified by the sponsor to participate in the project;

(ii) The AHP subsidies were used for eligible purposes, the project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines, and the subsidies were necessary for the financial feasibility of the project, as currently structured; and

(iii) The AHP-assisted units are subject to deed restrictions or other legally enforceable retention agreements or mechanisms meeting the requirements of § 951.13(c)(4) or (d)(1).

(2) *Rental projects.* Each Bank must take the steps necessary to determine that, based on a review of the documentation described in paragraph (a)(2)(ii) of this section within one year and 120 days after completion of a rental project:

(i) The services and activities committed to in the AHP application have been provided in connection with the project; and

(ii) The AHP subsidies were used for eligible purposes, the project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines, and the subsidies were necessary for the financial feasibility of the project, as currently structured.

(d) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application

as long as the rent charged remains affordable, as defined in § 951.1, for the household occupying the unit.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069-0006 with an expiration date of June 30, 2004)

[62 FR 41828, Aug. 4, 1997; as amended at 65 FR 5419, Feb. 4, 2000; 65 FR 8264, Feb. 18, 2000; 66 FR 50302, Oct. 3, 2001; 67 FR 12852, Mar. 20, 2002; 67 FR 18804, Apr. 17, 2002]

§ 951.11 Long-term monitoring requirements.

(a) *Rental projects.* For purposes of monitoring a rental project, Banks, members, and project owners shall carry out their long-term monitoring obligations pursuant to one of the three methods set forth in this paragraph (a).

(1) *Reliance on monitoring by a federal, state or local government entity.* For those projects that receive funds from, or are allocated federal Low-Income Housing Tax Credits by, a federal, state, or local government entity, a Bank may rely on the monitoring by such entity if:

(i) The income targeting requirements, the rent requirements, and the retention period monitored by such entity for purposes of its own program are the same as, or more restrictive than, those committed to in the AHP application;

(ii) The entity agrees to inform the Bank of instances where tenant rents or incomes are found to be in non-compliance with the requirements being monitored by the entity or where the project is not habitable; and

(iii) The entity has demonstrated and continues to demonstrate to the Bank its ability to carry out monitoring under its own program, and the Bank does not have information that such monitoring is not occurring or is inadequate.

(2) *Reliance on monitoring of AHP application commitments by a contractor.* For those projects that receive funds from, or are allocated federal Low-Income Housing Tax Credits by, a federal, state, or local government entity that monitors for income targeting requirements, rent requirements, or retention periods under its own program

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that are less restrictive than those committed to in the project's AHP application, a Bank, in its discretion, may rely on the monitoring by such entity if:

(i) The entity agrees to monitor the income targeting requirements, the rent requirements, and the retention period committed to in the AHP application;

(ii) The entity agrees to inform the Bank of instances where tenant rents or incomes are found to be in non-compliance with the requirements committed to in the AHP application or where the project is not habitable; and

(iii) The entity has demonstrated and continues to demonstrate to the Bank its ability to carry out such monitoring, and the Bank does not have information that such monitoring is not occurring or is inadequate.

(3) *Long-term monitoring by the Banks, members, and project owners.* In cases where a Bank does not rely on monitoring by a federal, state, or local government entity pursuant to paragraphs (a)(1) or (a)(2) of this section, the Bank, members, and project owners shall monitor rental projects according to the requirements in this paragraph (a)(3).

(i) *Requirements for project owners.* In the second year after completion of a rental project and annually thereafter until the end of the project's retention period, the project owner must:

(A) Certify to the Bank that:

(1) The tenant rents and incomes are in compliance with the rent and income targeting commitments made in the AHP application; and

(2) The project is habitable; and

(B) Maintain documentation regarding tenant rents and incomes and project habitability available for review by the Bank, to support such certifications.

(ii) *Requirements for members.* For rental projects receiving \$500,000 or less in AHP subsidy from a member, during the period from the second year after project completion to the end of the project's retention period, the member must certify to the Bank at least once every three years, based on an exterior visual inspection, that the project appears to be suitable for occupancy.

(iii) *Requirements for Banks—(A) Certifications received by the Bank.* Each Bank shall review certifications provided by project owners and members regarding tenant rents and incomes and project habitability.

(B) *Review of project documentation.* Each Bank shall review documentation maintained by the project owner regarding tenant rents and incomes and project habitability to verify compliance with the rent and income targeting commitments in the AHP application and project habitability, according to the following schedule:

(1) *\$50,001 to \$250,000.* For projects receiving \$50,001 to \$250,000 of AHP subsidies, the Bank must review project documentation for a sample of the project's units at least once every six years;

(2) *\$250,001 to \$500,000.* For projects receiving \$250,001 to \$500,000 of AHP subsidies, the Bank must review project documentation for a sample of the project's units at least once every four years; and

(3) *Over \$500,000.* For projects receiving over \$500,000 of AHP subsidies, the Bank must perform an on-site review of project documentation for a sample of the project's units at least once every two years.

(C) *Sampling plan.* A Bank may use a reasonable sampling plan to select the projects monitored each year and to review the project documentation supporting the certifications made by members and project owners.

(iv) *Monitoring by a contractor.* A Bank, in its discretion, may contract with a third party to carry out the Bank's monitoring obligations set forth in paragraph (a)(3)(iii) of this section.

(b) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application

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as long as the rent charged remains affordable, as defined in § 951.1, for the household occupying the unit.

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[62 FR 41828, Aug. 4, 1997, as amended at 65 FR 5419, Feb. 4, 2000; 65 FR 8264, Feb. 18, 2000]

§ 951.12 Remedial actions for non-compliance.

(a) *Repayment of subsidies by members*—(1) *Noncompliance by member.* A member shall repay to the Bank the amount of any subsidies (plus interest, if appropriate) that, as a result of the member's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(i) The member cures the noncompliance within a reasonable period of time; or

(ii) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to § 951.7.

(2) *Noncompliance by project sponsors or owners*—(i) *Duty to recover subsidies.* A member shall recover from the sponsor of an owner-occupied project or the owner of a rental project and repay to the Bank the amount of any subsidies (plus interest, if appropriate) that, as a result of the sponsor's or owner's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(A) The sponsor or owner cures the noncompliance within a reasonable period of time; or

(B) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to § 951.7.

(ii) *Limitation on duty to recover subsidies.* The member shall not be liable to the Bank for the return of amounts that cannot be recovered from the project sponsor or owner through reasonable collection efforts by the member.

(b) *Repayment of subsidies by project sponsors or owners.* A sponsor of an

owner-occupied project and the owner of a rental project shall repay to the member the amount of any subsidies (plus interest, if appropriate) that, as a result of the sponsor's or owner's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(1) The sponsor or owner cures the noncompliance within a reasonable period of time; or

(2) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to § 951.7.

(c) *Requirements for Banks*—(1) *Duty to recover subsidies.* A Bank shall recover from a member:

(i) The amount of any subsidies (plus interest, if appropriate) that, as a result of the member's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part; and

(ii) The amount of any subsidies recovered by a member from the sponsor of an owner-occupied project or the owner of a rental project pursuant to the requirements of paragraph (a)(2) of this section.

(2) *Settlements.* A Bank may enter into an agreement or other arrangement with a member for the purpose of settling claims against the member for repayment of subsidies. If a Bank enters into a settlement that results in the return of a sum that is less than the full amount of any AHP subsidy that is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, the Bank may be required by the Finance Board to reimburse its AHP fund in the amount of any shortfall under paragraph (c)(3) of this section, unless:

(i) The Bank has sufficient documentation showing that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts); or